IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,
Plaintiffs,
vs.
R.J. REYNOLDS TOBACCO
COMPANY, et al.,
Defendants.
_____/

Miami-Dade County Courthouse
Miami, Florida
Tuesday, 1:35 p.m.
June 13, 2000
PHASE II-B
TRIAL - VOLUME 543

The above-styled cause came on for trial before the Honorable Robert Paul Kaye, Circuit Judge, pursuant to notice.

TAYLOR, JONOVIC, WHITE & GENDRON
TAMiami,JFlorida WH305-358-9047N

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APPEARANCES:
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DAN WEBB, ESQ.
BRADLEY LERMAN, ESQ.
On behalf of Defendant Philip Morris
DECHERT PRICE & RHOADS
WILLIAM DODDS, ESQ.
On behalf of Defendant Philip Morris
COLL DAVIDSON SMITH SALTER & BARKETT
NORMAN A. COLL, ESQ.
On behalf of Defendant Philip Morris
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DOUGLAS J. CHUMBLEY, ESQ.
On behalf of Defendant R.J. Reynolds
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On behalf of Defendant R.J. Reynolds
KING & SPALDING
GORDON SMITH, ESQ.
On behalf of Defendant Brown & Williamson
CLARKE SILVERGLATE WILLIAMS & MONTGOMERY
KELLY ANNE LUTHER, ESQ.
On behalf of Defendants Liggett Group
and Brooke Group

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APPEARANCES (Continued)

SHOOK HARDY & BACON
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On behalf of Defendant Council for Tobacco Research

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I N D E X

WITNESS PAGE

MICHAEL SZYMANCZYK

Continued Direct by Mr. Webb 53920
Cross by Mr. Rosenblatt 53922

E X H I B I T S

PLAINTIFFS' EXHIBITS	OFFERED PAGE	ADMITTED PAGE	FOR ID PAGE
1-K			54000
52	53997		
53	53998		

E X H I B I T S

DEFENDANTS' EXHIBITS	OFFERED PAGE	ADMITTED PAGE	FOR ID PAGE
None			

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(Whereupon, the following proceedings were had:)

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THE BAILIFF: Everyone, please rise.
THE COURT: Okay. Let's have a sidebar.
Be seated, folks, please.
MR. ROSENBLATT: We don't need the court reporter.
THE COURT: Scheduling.
(Discussion off the record.)
THE COURT: All right. Let's get the jury out, please.
THE BAILIFF: Bringing in the jury. Jurors entering the courtroom.
(The jury entered the courtroom.)
THE COURT: All right. Have a seat, folks.
All right. Mr. Webb.
MR. WEBB: Thank you, Your Honor.
MS. LUTHER: Judge, I think they may need something.
THE COURT: Sorry about the mix-up.
Go Ahead.
MR. WEBB: Thank you, Your Honor.

CONTINUED DIRECT EXAMINATION
OF MICHAEL SZYMANCZYK

BY MR. WEBB:

Q. Mr. Szymanczyk, I want to conclude your

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examination with actually kind of where we began, with this chart of the major events or changes regarding how Philip Morris conducts its business during the time that you've been the chief executive officer.
Based on the testimony that you've given the jury regarding what Philip Morris USA has been trying to accomplish during the last two and a half years, as set forth on this chart that you've talked about during your testimony, tell the jury, what do you plan to do now for Philip Morris USA, to make sure that the mistakes of the past do not occur again?

A. Well, we've got a well-described mission. I think that it's the right mission. I think we've made good progress, but there's more work to be done.
My intent, the reason why I remained with the company, is to, in fact, pursue that mission and get it accomplished, and so we will continue to focus on that.
We will continue to work with the attorneys general and other public health authorities in an effort to reduce harm associated with cigarettes.
And that's what my objective is going forward, and that's what I intend on doing with the help of my organization.
MR. WEBB: I have no further questions, Your Honor.

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THE COURT: All right. Cross.
MR. ROSENBLATT: Good afternoon, ladies and gentlemen.
THE JURY PANEL: Good afternoon.

CROSS EXAMINATION

BY MR. ROSENBLATT:

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Q. Good afternoon, Mr. Szymanczyk.
A. Good afternoon.
Q. You became the CEO of Philip Morris, Inc. on November 1st, 1997, correct?
A. Correct.
Q. As you know, the testimony in Phase I of this trial began in October of 1998, and the members of this jury heard witnesses and reviewed exhibits for some nine months, and they returned their verdict in July of 1999.
You never showed up during those nine months, did you?
A. No, I did not.
Q. Okay. Now, in terms of -- in terms of corporate culture -- and there's been a lot of talk about corporate culture, referring, of course, to your company -- it's very much a part of the corporate culture of Philip Morris that when money is on the line, the number-one guy shows up, as you have showed

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up in this trial for the very first time, in order to try to convince this jury that their award of punitive damages should not be too high, but when health and addiction was on the line, you never showed up, correct?
MR. WEBB: Your Honor, object. Argumentative.
THE COURT: It is argumentative, Counsel.
BY MR. ROSENBLATT:
Q. Isn't that part of the corporate culture of Philip Morris, that when money is on the line, the very top people become interested and involved?
A. No, I don't believe it is.
Q. Well, you agree with the statement that actions speak louder than words?
A. I agree with the statement that actions speak louder than words, but in reference to your question, the elements of this trial during that period of time were based on past conduct of the company.
The reason why I'm here is because I have the responsibility to run the company now and in the future, so I've come to explain how I run the company now and into the future, so that the jury can consider that as it makes a decision about this next phase of the trial.

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I believe the people that have come to testify in this trial to this point are the people that do have some knowledge of the history of the company.
Q. Don't you have any knowledge of the history of the company?
A. Well, I wasn't here through most of the history of the company that is related to this case.
Q. You started with Philip Morris in 1990?
A. That's correct.
Q. Now, Procter & Gamble, the company that you were with for 17 years in sales, their main products

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were soap, toothpaste, mouthwash, diapers, and your focus was soap, as I understand it?
A. I was in the soap business. I was in the beverage business, primarily, yes.
Q. Okay. And after you completed 17 years with Procter & Gamble, you went with Kraft Foods to help them rebuild their sales organization, correct? That was your charge?
A. That's correct.
Q. And as a matter of fact, when you first came with Philip Morris in 1990, your first job was senior vice president of sales, correct?
A. That's correct.
Q. And you held that job about four years?

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A. That's correct.
Q. And your next position with Philip Morris was, you were the executive vice president of marketing and sales, correct?
A. That's correct.
Q. Okay. Would you agree that to a salesman, whether it's soap or cheese or Marlboros, to a salesman, the more the better? The more you sell of whatever the product is, the better for the salesman or saleswoman's job security and future? More is better?
A. I wouldn't agree with that in every category, no. I believe it depends entirely upon the category.
Q. Name a category where the salesman wants to sell less.
A. Well, the salesman wants to accomplish the objectives that are assigned to him relative to the category. So, for example, when I was in the bar soap business, it's pretty difficult to sell in the United States more bar soap in total than the public is going to use to wash with. You can't influence the amount of soap that's consumed in the United States. It's kind of a fixed number that's based on population.
So your focus becomes market share, how much market share can you get of a market that you can't influence.

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That's very much the same way with the tobacco industry's approach. It's a declining business. It's been declining for a long time, and the focus of the sales organization is building market share in that marketplace.
So what you measure your organization on is their ability to build market share.
Q. Okay. And if your focus is market share, the more the better? You want more of the market share --
A. You'd like --
Q. -- than your competitor?
A. You would like to get more market share.
Q. Yes.
A. But that doesn't necessarily translate to more volume.
Q. It's a cause of celebration within a tobacco

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company if their market share in 1999 is better than it was in 1998? I mean, that's the goal?
A. That would be true, yes.
Q. Okay. Now, you've told us on direct examination -- you told us, when I took your deposition on May 10th, that you have always believed smoking is bad for your health, correct?
A. That's how I grew up, yes.
Q. Okay. Yet, 1990, after having established a

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very successful sales record in other products and everything you've told us, you really never paid any particular attention to tobacco issues, other than you had this belief it's bad for your health, so in 1990, you accept a job where the goal is to increase the market share of an addictive, killer product. Why? Why did you take that job in 1990?
A. Well, I started to explain that yesterday. And as I said, when I was originally approached to take a job with Philip Morris, I -- I rejected that approach. And I mentioned that I -- in the course of considering opportunities, I had a conversation with a friend that I have a lot of respect for, who's very senior to me and who has a lot of experience in business, and one of the things he said to me was that if every -- if every responsible person shied away from a difficult business, then what kind of a business world would we have; that good people have a responsibility to do hard things, and that he didn't believe just because the business was controversial, that it was something that I should shy away from; that, in fact, there were people who did choose to smoke, and that a business like cigarettes that did, in fact, carry with it risks needed to be managed in a very responsible way, and that -- and I should consider

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that from that point of view.
And I -- and I did. And that did -- that did have a bearing on my decision.
Q. Even though the controversy in the tobacco business or the noncontroversy, since your Web site admits that there's a universal medical and scientific consensus, that the product that you promote to the tune of $6 billion a year kills people, you still thought that was a responsible thing to do, because from a business standpoint, it was a challenge?
MR. WEBB: Your Honor, can I object? It's been asked and answered. He's been asked -- he just answered the question.
THE COURT: I'll overrule on this case. It's a pointed question.
THE WITNESS: Do you want to ask me your question again?
MR. ROSENBLATT: I'll ask the court reporter. Nancy.
(The question was read by the reporter as follows:

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Even though the controversy in the tobacco business or the noncontroversy, since your Web site admits that there's a universal medical and scientific consensus that the product that you

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promote to the tune of $6 billion a year kills people, you still thought that was a responsible thing to do, because from a business standpoint, it was a challenge?)

A. Well, I didn't say from a business standpoint it was a challenge. What I -- what I said was that my determination was that I shouldn't simply shy away from the opportunity because it was a controversial business.

In fact, at the time that I joined the company, my view of it was, while packages all contained warning labels, the company itself said to me that -- that smoking certainly had been proven to be a risk factor for disease. I understood all of that.

The company -- the company's objectives were not to try to get people to smoke, but, instead, to try to build share of market, and so from my viewpoint, going into that business with an objective of participating in a responsible way did not seem to me to be a bad thing to do.

Now, as time has passed in this business, a lot more than was available to understand in 1990 has become available to understand, and certainly that has been a learning experience for me. And the requirements, I think, on me and the organization at

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Philip Morris have become greater, in terms of the things that we need to do to be a responsible company in what is a business that carries with it a risk to people's health and, in fact, has been proven to harm.

Q. You've used that expression just in the short time that I've been questioning you, and I put quotes around it earlier, and then you just used it again: "A product or a business that carries with it health risks."

You recognize that that is precisely the language -- that that is precisely the language that was talked about in Phase I of this case and is precisely the language that the tobacco industry has used historically to avoid the simple truth that cigarettes kill people and cause cancer?

MR. WEBB: Your Honor, objection. Argumentative.

THE COURT: Overruled.

A. But it was the language in 1990 when I joined the company.

BY MR. ROSENBLATT:

Q. And you're using it in 2000?

A. No. I'm describing to you -- you asked me about the point in time in 1990, and I'm describing that to you.

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Q. Okay. You know, Mr. Webb asked you questions about core values, and you've got this -- you've got this sheet. Wouldn't you agree that words like integrity, respect, you know, those are win-win kind of words; who's going to disagree with them, when you use those kinds of glittering generalities and vague concepts, in a basic statement of policy of a tobacco -- no one can disagree with you that you're going to operate your company with respect and integrity, correct?

A. Well, I think that most people agree that that's a good thing to do, yes.

Q. I agree.

Now, do you know that as -- and I want you to tell me -- I don't think you wrote this personally, but you were very much involved in the writing of it. I think you told me you wrote the mission statement?

A. That's correct.

Q. Okay. But you're very familiar with Our Core Values: You've talked about it to your employees; you've talked about it publicly, correct?

A. Yes, I have.

Q. As I read -- as I read this page, Our Core -- Our Core Values, if a person just got that piece of paper, didn't know anything about the issues involved,

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the person could think you're a manufacturer of cribs? It doesn't say a word -- a word in there about cigarettes or about health or about addiction, does it?

A. If you turn it over in the mission statement, it says a lot about cigarettes and what our business is, and, of course, this is our core values, as presented to our organization, and certainly they understand what business they're in.

Q. Right now I'm asking you about Our Core Values. On this page describing the core values of the company, of which you are the number-one person, there's not a word in Our Core Values which would even tell anyone that you sell cigarettes?

A. Well, it's because it's on the other side of the page, and everybody in our business knows that we sell -- business -- sell cigarettes. So I don't get your point.

Q. Well, I'll tell you what my point is. My point is that you want to skirt away from the obvious; and even on Our Mission Statement, you talked about consumer products, you talked about our products. Even in your mission statement, does the word "cigarettes" appear?

A. It says: Our core business is manufacturing and marketing the best quality tobacco products

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available for adults who choose to use them.

It was very clear we're in the tobacco

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product business.
Q. Well, when you go down -- well, the first bullet point: Do our part to proactively identify and capitalize on opportunities to discourage underage use of our products.
And when you go down to this bullet point, again, it's: Our products.
And isn't it a fact that in the mission statement and in the core values statement, you want to distance yourself from the fact that what you do is sell cigarettes?
A. Well, no. I mean, everybody in our business understands that that's all we do, is sell cigarettes. And so, I don't think that's the case.
Q. Now, Mr. Webb asked you -- by the way, let me ask you this. Dee Dee, I had her count the charts that we used during your direct examination, the bullet points, the charts, the walk-throughs. Do you know how many there were?
A. No, I don't.
Q. A lot. Do you agree, a lot? I mean, I don't think Mr. Webb ever questioned you for five minutes without referring to a chart or -- which he has a right

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to do, and which you have the right to do. But there are about 70 charts.
Were those charts in existence when I took your deposition on May 10th?
A. I don't know that they were, no.
Q. You've been over those charts a bunch of times before yesterday, haven't you?
A. I've been through the charts, yes.
Q. Now, when Mr. Webb asked you the question: "Why don't you want kids to smoke?" as I recall, your answer was you said it was illegal and it's just plain wrong and it's an adult decision, but you didn't say: "I don't want kids to smoke because I don't want them to become addicted and die from smoking"?
Isn't that the bottom-line reason of why a person should not want kids to smoke, so that they don't become addicted adult smokers and contract a disease which will cause their death?
A. Well, I believe in my testimony yesterday, I said the reason -- one of the reasons I didn't want them to smoke is because it's bad for their health, and if it's bad for their health and, in fact, it ultimately makes them sick and it contributes to their death, absolutely, we don't want that to happen. And that's what I said.

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Q. Contributes to their death? You still have -- you still have difficulty with the concept of simply flatout saying that Marlboros, in certain cases, in a certain number of cases, will inevitably cause a smoker's death; it's always a contributing or it's always a risk factor; isn't that true?
A. Well, I said yesterday, or I said actually

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today, that smoking causes disease, if your definition of "cause" is the strong statistical evidence that the Surgeon General uses to make that determination. And I think that you can't deny with those statistics that somewhere, someone has died from smoking a cigarette, and one of our cigarettes. The issue is having the medical capability to determine exactly who and in what situation.

Q. You see, Mr. Szymanczyk, by virtue of not having been here during Phase I -- and then I asked you on your deposition, I said: "Well, okay, did you ever read any of the testimony in Phase I?" And you haven't, correct?

A. No, I have not.

Q. You haven't -- you didn't read a word?

A. I did not read the testimony, no.

Q. Okay. Then you may not realize that the answer you just gave about, "Well, it depends on the

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definition you want to use, and if you use the statistical definition" -- that was the defense in Phase I of this case for nine months, as to why your company took the position that it has not been proven that cigarette smoking causes lung cancer and other diseases, and here you are, in June of 2000, using precisely the same language.

So what I want to know is: What's changed?

MR. WEBB: Your Honor, can I object to the argument -- that was complete argument. I object to the form of the question.

THE COURT: Overruled.

THE WITNESS: I'm sorry?

MR. ROSENBLATT: I'll repeat it.

A. You want to know --

BY MR. ROSENBLATT:

Q. Yes. I want to know, since you're using the same language about, "Well, it depends on your definition, and if you use the statistical definition" -- I'm telling you that was the defense for nine months in Phase I, so if you're using the same language and you're the number-one guy for Philip Morris, Inc., what has changed?

MR. WEBB: Your Honor, I object. If he's going to use Phase I, he's got to accurately state it.

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I object to the form of the question.

THE COURT: I'm trying to get the old memory working again, as to all of Phase I for all nine months.

But I think essentially the question is appropriate. All right. Overruled.

BY MR. ROSENBLATT:

Q. So what's changed?

A. Well, Mr. Rosenblatt, I've given you specific information as it represents my understanding based on the facts on this subject. What I'm aware of are scientists saying -- their testimony in this trial

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would be consistent with what I'm saying, but those are the facts as I know them. That's the scientific evidence as I know it, so I can't tell you that there's something different.

I think the facts say that, yes, smoking causes disease, if your definition of "cause" is the strong statistic evidence that the Surgeon General has used.

But if, in fact, you want the answer to the question about what the mechanism is by which disease is caused in the human body, science doesn't know that at this point. That is an unknown. It remains an unknown.

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And I believe that was my testimony this morning representing the company, and I believe while scientists would have said it in more detail and they may have said it a different way, I believe that's what they said at other points in this trial.

Q. Mr. Webb showed you, during his questioning of you, the Web site where Philip Morris says in a very forthright way: There is a universal scientific and medical consensus that cigarette smoking causes lung cancer and other diseases.

Don't you recognize that what you just said shows that you disagree with that?

A. No. What I just said is I agree with that precisely.

Q. You agree with it, with caveats --

A. No caveat.

Q. Statistical -- you don't say in your Web site that the statistical evidence says that or the mechanism hasn't been established, you don't say that in the Web site; you simply make the flatout statement, which is absolutely true, that there is a universal medical and scientific consensus that cigarette smoking causes lung cancer and other diseases, without qualification?

A. And I agree with that statement, and I also

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agree with the basis on which it was made, which is the strong scientific evidence, statistical evidence. That's the basis for that consensus. And so I simply am agreeing with that.

Q. Philip Morris has never said on its Web site, or anywhere else, that: We, Philip Morris, agree with that consensus; isn't that true?

A. You know, I think we have. I think we have. I went back and looked at that since my deposition, and I believe that the statement on our Web site that says: Smokers and potential smokers should rely on this information when making a decision regarding smoking is, in fact, an implied agreement.

It is a statement from the company, a directive from Philip Morris, that, in fact, tells smokers and potential smokers that they should rely on this information, that it's true and that it's

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accurate, and that is an implied agreement.
Q. Mr. Szymanczyk, you referred to your deposition because you've obviously read your deposition, and on Page 44, I asked you this question and you gave this answer, on Line 6:
"Has Philip Morris ever said on its Web site, or anywhere else, that we, as a company, agree with that consensus?"

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And your answer was: "We have not."
And as I understand what you're saying today is, you've thought about it and believe your answer was wrong on the deposition?
A. That's right. I believe that that is, in fact, an implied agreement.
Q. By the way, you were not involved in negotiating the Master Settlement Agreement, were you?
A. Well, I was not a negotiator on it, no, I was not.
Q. Philip Morris, Inc. is agreeing to pay 50 percent of $250 billion over the next 25 years, and you didn't negotiate the agreement, but the CEO of Philip Morris Companies, Inc., Geoffrey Bible, was very involved in the negotiations, correct?
A. Well, the agreement was negotiated by a gentleman named Meyer Koplow, who is an attorney, and it was negotiated on the other side by a gentleman named Joe Rice, who is also an attorney, who represented the attorneys general.
Mr. Bible was certainly involved, as the chairman and CEO of Philip Morris, and I had some involvement in some of the information relative to what was in the Master Settlement Agreement, but it was negotiated between lawyers. They were the ones that

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were the people that talked to each other to negotiate the details.
Q. Now, Mr. Szymanczyk, at your level of business, lawyers take orders from you and from Mr. Bible. Meyer Koplow was not some independent guy doing what he thought was best in his judgment; he was following your instructions, both as to the amount and what you would agree to, correct?
A. Not -- not relative to the amount, relative to some other aspects of agreement; in particular, aspects related to the execution of the agreement, time lines for that execution. Yes, I was involved in that.
Q. Virginia Slims advertising. This is a magazine called, if I'm pronouncing it right, Elle, or Elle. May 2000. Last month.
Mr. Webb asked you some questions about the Virginia Slims' ad, which uses the line, you know, "Find your voice." You said that was the general theme, "Find your voice." You want to tell all these American women in their 40s to find their voice, which means, be independent, think for yourself, don't take orders from anybody, be a person. That's what it

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means, "Find your voice," correct?
A. Well, I said, in my direct, it means be yourself. That's the description, yes.

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Q. Okay. And this is the ad that you were discussing with Mr. Webb, where the statement in the ad is: "Never let the goody two shoes get you down."
Now, do you remember how that came up on your deposition?
A. I do, yes.
Q. Yes. I said to you -- we were into the deposition for about an hour or so, and I said to you: "Never let the goody two shoes get you down," and I paused, and I looked at you, and then I said to you: "Ring a bell?"
And you said, "No." You didn't even remember this.
A. That's correct, I did not.
Q. You didn't remember. Meant nothing to you.
And then I asked it to you a second time, and you still didn't remember.
A. That's correct.
Q. And you're the guy that approved this ad, right?
A. I did, yes.
Q. You approved it. You approved it.
Now, today is June 13. I took your deposition on May 10 in New York City, and I asked you on May 10: "Who is this ad referring to when it

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says -- who are the goody two shoes?" You didn't know then, and according to you, you don't know today.
MR. WEBB: I object to that. That's not what he -- I object to the form of the question.
THE COURT: The jury will remember what the testimony was. Overruled.
BY MR. ROSENBLATT:
Q. Isn't it your testimony today that you still don't know who the goody two shoes are, as referred to in that ad?
A. Well, it doesn't refer to any particular group. As I said, the various copy lines in the Virginia Slims advertising are all meant to convey "be yourself," and I understand the point you've made, that some people look at that and refer to it as or feel that it may refer to the Surgeon General or public health officials. I told you that wasn't the intent. It wasn't. That ad is ending. Otherwise, I would have pulled it.
And I've instructed the brand group to pay closer to attention to this from the point of view of what people, other than the intended audience, might think about it. And I don't know what else I can do relative to that ad, Mr. Rosenblatt, but I believe I've done the right thing.

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BY MR. ROSENBLATT:
Q. Does this scenario make any sense to you in a teenage context? It's a bunch of kids hanging around, boys or girls or mixed. Some are smoking; some are not smoking.
A kid would say: "Come on, come on, try a cigarette."
"No, no, I don't want a cigarette."
And the smoker says: "Oh, don't be a goody two shoes."
Does that have any sense of realism to you, that that's the kind of thing that a kid who is smoking would say to a kid who doesn't want to: "Oh, don't be a goody two shoes"?
A. Not to any kids I know today, but that would be language that they would use.
Q. And here is another -- here is another magazine, May 2000, Glamour. Same ad, right?
A. That's correct.
Q. Two pages -- two pages in a major popular magazine. It's expensive. You must have believed in this theme, right?
A. Well, actually, Mr. Rosenblatt, I showed you there were eight copy lines. Virginia Slims advertising is spread across over 200 magazines. That

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particular ad is run in 31 magazines in the course of six months, so you have to pull out magazines that have that ad in it, but those are what the facts are.
Q. Let me ask you something else from a common-sense standpoint.
We talked about circulation and we talked about readership and we talked about research and numbers, but based on your experience in the real world, if a magazine like this is laying around, whoever subscribed to it, it's the kind of magazine that a teenager, boy or girl, would be likely to thumb through, wouldn't it?
A. Depends on where it's laying around. Maybe; maybe not.
Q. A doctor's office, a home?
A. It's possible.
Q. What is the thinking in this same issue of Glamour magazine? Would you agree that this is a magazine which would be on the list of those magazines essentially targeting a female audience?
A. I would agree with that, yes.
Q. Okay. So what is the thinking of having, you know, the -- are you trying to make women Marlboro smokers or Virginia Slims smokers, or as long as they're smoking a Philip Morris product, it's okay with

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you?
A. Well, brands advertise in magazines based on who their consumers are. Marlboro happens to be the

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largest selling cigarette among women, so that's one of the reasons why it's advertised in that magazine.

Q. Well, Marlboro is the largest selling cigarette amongst 12-year-olds, it's the largest selling cigarette among every group: men, women, kids?

A. It's the largest selling cigarette among every demographic group and every ethnic group, with the exception of African-Americans. And every age group with the exception of those over 65.

Q. When you approve the ad, "Don't let the goody two shoes get you down," I assume -- was it the advertising agency that came up with that -- that precise language?

A. Yes. It would have been an advertising agency.

Q. Did you ask them what they meant?

A. No, I did not. I approved that ad with a group of ads, all in the context of "be yourself." All those ads were produced by an advertising agency, by people outside of the company, and I'm sure none of those people have any intention of producing advertising that, in fact, would demean the message

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from the Surgeon General.

Q. Well, between the time of your deposition on May 10th and today, did you ever call the agency and say, "Well, you know, this has become an issue. The lawyer for the class is asserting that 'goody two shoes' means doctors and parents and teachers. What did you mean?" You didn't do that, did you?

A. No. I told them to get rid of the ad.

Q. Does that mean I convinced you that that's what it means?

A. No. It means that I don't want to -- yes, I guess in a way. I mean, you didn't convince me what that means, but you convinced me that people might view it that way, and I don't want them to view it that way.

Q. But it never occurred to you --

A. It just didn't.

Q. -- it never occurred to you before I brought it up?

A. It did not, nor did -- I mean, Mr. Rosenblatt, nor did it occur to any of the audience when the research was done on the advertising, nor has it occurred at all in any feedback from consumers, because -- so that's just not the case. But I understand your point of view; that's why I've taken the action that I've taken.

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Q. My point of view is, if you appreciate -- my point of view is, that that's an invitation to rebel against authority figures: "Don't let the goody two shoes get you down. Do your own thing. Do what you want."

A. And I understand that, and that's why I've given the brand the instruction to make sure that there isn't any tone of any rebelliousness in any of our

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future advertising.
Q. Victor Crawford, before he died, said the tobacco companies went after kids; they target kids. True or false?
A. Well, we do not target kids, and I have not been, in the time that I've been in the company, ever been in a meeting or a situation where I ever once have heard anybody or seen anybody discuss or implement or develop any plans designed to target kids.
So I can't agree with that statement.
Q. So to your knowledge, Philip Morris doesn't target kids today and they never target kids?
A. I'm telling you, from the time I've been with the company, I've never seen any occurrence that would lead me to believe that the company has a methodology, any desire to target kids, as a part of its business practices.

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Q. Well, during the ten years that you've been with Philip Morris, Inc., have you made it your business to study the documents and the charges, to ascertain whether or not that at some time in the past your company targeted kids?
A. I have not made that my business, no.
Q. How can you change -- how can you change -- how can a company change without knowing what went on before, what you want to change from?
A. Is that your question?
Q. Yes.
A. When I became CEO of the company, I had a choice to make. One choice I could make was to look back and to spend my time studying the millions of documents and trying to make some determination as to what was correct and what was incorrect and what allegations were true and what allegations weren't true, to try to find out, in the context of the time that the document was written, what, in fact, the circumstance was, or I had the choice to simply assume that the allegations made by the attorneys general, which are the same allegation which are made in this case, were, in fact, true.
To make that assumption, to rely on all of the work that had been done by the attorneys general,

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and their evaluation of all of those documents and the presentation of their cases, and the determination they made as to what needed to be done, and to simply spend my time and my effort on focusing my organization on accomplishing that, that's what I've done.
Q. Mr. Szymanczyk, as I've understood it, one of the main purposes of your testimony in this case, on behalf of Philip Morris, is to tell this jury: We've gotten the message; we've changed; we are a new company.
How can you make that assertion to this jury without understanding what took place in the past?
A. Well, I think I was clear in my deposition,

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Mr. Rosenblatt. What I told you was I was coming here to tell this jury how I run this business today and how I intend on running it into the future.

The jury has had the opportunity to review the past. Now they've had the opportunity to see how I run the business, and the jury's the one that will pass judgment on what's changed and whether or not the things that they've seen about how we're operating now and what we're doing in the future are the appropriate things. And I'll leave it to them to make that judgment.

Q. I agree with you, that you were clear in your

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deposition when you said you were not going to discuss change, you were going to simply discuss how you run the business today, and you were going to let the members of the jury make up their own minds, correct?

A. That's what I said.

Q. Victor Crawford, the tobacco lobbyist, on that commercial which I assume you've seen, Victor Crawford, the tobacco lobbyist who died of cancer, said on a commercial put out by the state of Massachusetts, he said: "As a tobacco lobbyist, I lied, I lied and I'm sorry."

You have never said that. You've never said that and no CEO of Philip Morris has ever said -- has ever admitted to the American people: "I lied, we lied and I'm sorry. I'm sorry for the damage and the pain and the deaths we've caused."

MR. WEBB: Your Honor, I object to the form of the question regarding this man Crawford. I don't object to the subject; I object to the form of the question, referencing some hearsay statement by someone --

MR. ROSENBLATT: It's in evidence, that --

THE COURT: Yes. It was in evidence.

Well, I'm trying to figure out what the question is. I don't think we ever got to that, other

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than: "You've never said that, and neither has any CEO of Philip Morris ever said it."

So if you're in a position to answer that question, you may do so.

A. I don't know what the question is.

BY MR. ROSENBLATT:

Q. Yes. Well, the question is, you've never said -- you've never said, on behalf of Philip Morris: "We lied and we're sorry," and to your knowledge, no other CEO of Philip Morris has ever said that?

A. I have not said that. I don't -- I'm not aware of another CEO who's said that.

Q. As a matter of fact, on your deposition, I gave you the opportunity to apologize. We discussed the jury's findings in this case, fraud and misrepresentations and conspiracy. I said, "Do you want to apologize for that?" and you didn't take advantage of the opportunity, correct?

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A. Well, what I said, Mr. Rosenblatt, at that point in time, was that representatives from the company have come to this courtroom and they've testified about the past and they told the truth, I believe, relative to what they know about the past, and this jury has made a determination that certainly wasn't in favor of the company; they've found us guilty

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of the allegations.

And what I said to you was that for me, I really wasn't here for that past. For me, to come in at this point in time and to start apologizing for that past I think would be pretty insincere, because the jury has found us guilty and now I'm going to come in here and apologize for something that really I wasn't a part of.

So I find that to be difficult, probably an inappropriate thing to do. If I felt like an apology from me would heal these people or bring back Mrs. Della Vecchia, then I'd apologize, but I know that I can't do that. All I can do is really try to go forward and run this business in a responsible way, the best way I can.

Q. But by --

A. That's what I'm trying to do.

Q. But by running your business in a responsible way, and going after market share, you are every day creating new Mrs. Della Vecchias, Frank Amodeos and Mary Farnans; don't you understand that and recognize that?

A. Well --

MR. WEBB: Object to the form of the question, Your Honor.

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THE COURT: Overruled.

A. What I'm trying to do is run this business in a way that does, in fact, compete in the marketplace successfully with how to do that.

Q. You know, you just said a moment ago, when we were discussing the issue of an apology, you believe the witnesses on behalf of Philip Morris came in here and told the truth. That's what you just said, told the truth. You believe that today, in spite -- you know, it's one thing to say, "I respect the jury's findings," but you believe that today, in June of 2000, you still believe that your people in Phase I from Philip Morris came in and told the truth?

A. I believe.

Q. And, unfortunately for you, the jury didn't believe that?

MR. WEBB: Judge, I object to that.

THE COURT: I'm not so sure where this question is going at this point. It's a long question, or statement.

MR. ROSENBLATT: At least I'm not using charts, Judge.

THE COURT: Maybe it would be better if you

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did.
MR. WEBB: Yes.

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MR. ROSENBLATT: I don't think so.
THE COURT: If you would rephrase the question so I understand what we're looking at.
MR. ROSENBLATT: Okay.
BY MR. ROSENBLATT:
Q. It's your position -- it's your position today that the witnesses who testified on behalf of Philip Morris during the Phase I trial, which lasted from October of '98 until July of 1999, told the truth?
A. My belief is that the people who testified on our behalf told what they believed to be the truth. I have no reason to believe that they came in here and told lies.
Q. And that goes for the witnesses -- that goes for the witnesses for Philip Morris that came in here and said to this jury: "It has not been scientifically proven that cigarette smoking causes lung cancer and other diseases," and that also goes for the witnesses who came in here and told the members of this jury that: "Our product is not addictive, because there are 50 million quitters"; they're all telling the truth?
A. I think they were telling the truth based on their beliefs. I believe they were, yes.
Q. Let's talk -- let's talk about the culture of Philip Morris, which hasn't changed one iota since The

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Frank Statement 46 years ago.
Part of the culture of Philip Morris is that you will never agree to pay money to a sick individual; you will settle with the attorney generals of 50 states and obligate yourself to pay $250 billion, but you will never give ten cents to the victim of your product; isn't that true?
MR. WEBB: Your Honor, I --
Q. And isn't that part of your culture?
MR. WEBB: I object. Can I be heard on this, Your Honor?
THE COURT: If you want to be heard.
(The following proceedings were had at sidebar:)
MR. WEBB: Your Honor, there was a motion in limine that was granted in my favor, that Mr. Rosenblatt is not allowed litigation strategy in this case as to whether these companies have settled or not settled cases; and therefore, this question violates that motion in limine. Your Honor has already ruled on it, that he's not allowed to go into it.
Philip Morris has a right to make a decision on whether to pursue certain litigation strategy or not pursue certain litigation strategy in a given case, and that's not something that Mr. Rosenblatt is to go into,

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to establish or suggest that we engage in bad conduct; and Your Honor granted that motion in limine and said that we could not do that, and that's what this question is designed to bring out.

THE COURT: No. I think -- I think you misunderstood that. I think we were talking about what the lawyers were doing. The position that was taken is an entirely different matter. It was always addressed what the lawyers did in that case, what they said in that case, and that was the -- the position of the company is a different story. You can take a position without going into court.

MR. REILLY: Your Honor, you can't talk about settlement, either in this case or some imaginary case at any time.

THE COURT: Oh, oh.

MR. REILLY: That's absolutely correct.

THE COURT: If that was the case, you should have never brought it up in the first place, as far as MSA and FSA.

MR. REILLY: No, Your Honor. This is a question by Mr. Rosenblatt of whether or not we would settle a case with some imaginary hypothetical plaintiff.

THE COURT: No.

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MR. REILLY: At a future date.

THE COURT: He's talking about a past case.

MR. REILLY: No. He's talking about future, imaginary cases, and he can't do that.

MR. ROSENBLATT: I'm talking about something that's never been changed. They brought up the issue of change; they brought up the issue of culture.

THE COURT: I suppose I'll have to go back and read it.

I know it's difficult.

MR. REILLY: If you look back at Mr. Rosenblatt's question, you'll see that --

THE COURT: Wait. Wait. Stop talking.

Okay.

MR. REILLY: "Will never give." That's a future act, Your Honor.

THE COURT: "Settle with the attorneys general of 50 states."

MR. REILLY: "But you will never give." That's a future statement.

MR. ROSENBLATT: And never have. Fine.

MR. REILLY: He doesn't get to talk about settlement, in a future imaginary case, Your Honor. That's mistrial material right there.

THE COURT: Just because he used the term

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"will," when he should have used "had," because they've already settled with the attorneys general.

MR. REILLY: I can't help his grammar, Your Honor.

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MR. REID: Your Honor, the problem --
THE COURT: Rephrase the question.
MR. REILLY: Your Honor, I move for a mistrial based on that.
THE COURT: Denied --
MR. REID: Can I just add one thing?
THE COURT: -- on that one.
MR. REID: The reason for the in limine motion is the position we took is we have to come in and litigate all those cases to explain why we didn't settle, if we didn't, and there's no way to defend it.
THE COURT: We're talking apples and oranges. I'm sorry.
(The sidebar conference was concluded, and the following proceedings were held in open court:)
BY MR. ROSENBLATT:
Q. You agree that Philip Morris, historically, has never settled a case with any individual victim of your product, who claimed throat cancer or lung cancer or death as a result of a long smoking history of one of your cigarettes?

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MR. REILLY: Same objection, Your Honor.
THE COURT: Overruled.
A. In the history of Philip Morris, Mr. Rosenblatt, there have been eight individual smoking and health cases that have gone to a jury trial; and five of those cases, the ultimate outcome was in favor of the company, and three of them are still in due process. So if at the end of due process the company is found to owe damages, it will pay those damages.
BY MR. ROSENBLATT:
Q. Do you remember my question? My question was: Historically, it's always been the policy of Philip Morris never to settle a case voluntarily, as you voluntarily entered into the attorney general agreements; it's always been the policy of Philip Morris never to settle a case voluntarily with an individual smoker or the survivor of a smoker?
MR. REILLY: Same objection.
THE COURT: Overruled.
A. There have been eight cases, and I told you what the outcome of those eight cases was.
Q. Yes?
A. None of those were settled; at least they weren't to this point.

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Q. No change in that policy. What you're saying now is: If we lose the appeal on the three cases where the jury has found against us, we'll have no choice; we'll pay the money?
MR. REILLY: Same objection.
A. What I said was --
THE COURT: I think we're getting into --
MR. ROSENBLATT: Okay.
THE COURT: -- another area which we

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shouldn't be getting into at this time.
BY MR. ROSENBLATT:
Q. Now, you know, the $250 billion obligation under the voluntary obligation, under the Master Settlement Agreement, no money goes into any individual's pocket?
A. Well, all of that money gets paid to the states and is for the benefit of all of the people in all of those states; and I think it remains to be seen how the states will determine how they want to distribute it, so I don't know whether that's true or not at this point.
Q. And in terms of the voluntary settlement with the attorneys general, which has been referred to as the Master Settlement Agreement, not a single one of those cases was ever decided by a jury; in other words,

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you and the other tobacco companies decided to settle those cases before a single one had ever gone to a jury, correct?
A. That's not true.
Q. No? Did a jury --
A. You're talking -- you're talking about the state Medicaid cases.
Q. Yes.
A. No, that's not true.
Q. Now, I know there were some trials that began, but did a jury ever actually return a verdict?
A. Oh, no. That's correct.
Q. Oh, okay. So you entered into that settlement without there being a single jury verdict, correct?
A. In that case, yes.
Q. Let's talk about your mission, realistically, as a testifier -- as a witness in this case. Your mission, as the CEO of Philip Morris, and your agreement to testify in this case, is to try to keep down punitive damages; to try to convince this jury that you do business in a very straightforward, honest, decent way; and therefore, you shouldn't punish us very hard. That's your mission in this case, correct?
A. My mission is to come here, explain to this

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jury how I run this business today, and my hope is that this jury will look at how we run the business and want us to continue to run it in that way, and will allow us to do that. That's what my hope is.
But, ultimately, I'm here to give them the information that I believe they need so that they can make the decision that they think is appropriate.
Q. How is that any different from the guy who robs a home and says to the Judge: "I'll never do it again; I'm a different person; don't punish me. Yeah, I robbed the house and I did those terrible things, but I'm a new guy and I shouldn't be punished"? Would that --
MR. WEBB: Your Honor, object to the form of

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the question.
THE COURT: It's argumentative. Sustained.
BY MR. ROSENBLATT:
Q. A very straightforward question. Listen carefully.
Do you believe that your cigarettes have caused cancer to members of this class?
A. I believe that -- that it's a reasonable assumption to say that that's a possibility; it could have happened.
Q. "A reasonable assumption that it's a

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possibility."
Now, your answer to my question must be "No," because my question is not talking about assumptions, not talking about possibilities. Do you believe that your cigarettes have caused cancer to some members of this class?
A. Well, again --
Q. Same answer?
A. -- as far as I can -- as I can say with the knowledge that I have, I believe the possibility exists that that would have occurred, because the statistics would indicate that the possibility exists that that could have occurred.
Q. Again, you're using the word "possibility," which was a very popular word during Phase I. So that hasn't changed?
A. It's the truth as I know it.
Q. Do you admit -- do you admit that cigarettes caused the lung cancer and the throat cancer in these three class representatives, or is that only a possibility?
A. I don't know that.
Q. Mr. Szymanczyk, did Philip Morris, Incorporated intentionally misrepresent facts for decades about the health effects and addictive nature

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of cigarettes?
A. I don't know.
Q. Well, that's what this jury found. And you just don't know?
A. I don't know.
Q. How can you responsibly market and promote, to the tune of billions of dollars a year, a product which after nine months the members of this jury found was a defective and unreasonably dangerous product?
MR. WEBB: Your Honor, object to the argumentative form of the question.
THE COURT: Overruled.
A. How can I -- would you repeat the question?
BY MR. ROSENBLATT:
Q. Yes. How can you responsibly promote, advertise and market a defective and unreasonably dangerous product, if you accept that, that Marlboros and Basic and Merit and Virginia Slims are a defective and unreasonably dangerous product? How do you

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responsibly market that product?
A. Well, I think what you have to do to responsibly market a product like that is what I described in my direct testimony. I think that you have to make sure people understand what they need to know about the decision they make relative to that

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product; and you need to do things to keep kids from using the product; and you have a responsibility to try to lower the risk of the product in the marketplace, and those are the things that I'm doing.
Q. You would agree, would you not, Mr. Szymanczyk, that if your company engaged in intentional, fraudulent misrepresentations, knowingly produced a defective and unreasonably dangerous product, concealed the truth and were part of a tobacco industry conspiracy to advance your fraudulent intentions, that that deserves punishment, that that deserves punishment?
A. Is that your question?
Q. Yes.
A. Would I agree with that?
Q. Yes.
A. Well, I think if that's what occurred, and I believe that's what the attorneys general determined they believed occurred --
Q. Don't. I'm not asking you about --
MR. WEBB: Your Honor, can he finish?
THE COURT: I agree with counsel.
MR. WEBB: He's answered the question.
THE COURT: Throwing in the attorneys general had nothing to do with it. So I told you that before.

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This is this case. Let's talk about this case.
A. Well --
MR. WEBB: I object to the form of the question, then.
THE COURT: Well, overruled.
A. You're going to have to ask me the question again.
BY MR. ROSENBLATT:
Q. Okay. Okay.
The jury in this case found, after nine months of testimony, hearing both sides, the fullest story that any jury in America has ever heard, exhibits, they found that your company and the other companies intentionally spoke and concealed -- there were fraudulent misrepresentations; they produced a defective and unreasonably dangerous product, hid the truth and were part of a tobacco industry conspiracy to advance your fraudulent intentions.
If the jury finding is correct, and that's what the finding was, you would agree that that deserves punishment?
MR. WEBB: Again, Your Honor, I object, unless he can -- can I be heard at a sidebar on this?
THE COURT: Not necessary. I think it's an

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appropriate question.

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Overruled.

A. Well, unless punishment had already occurred, I would agree.

BY MR. ROSENBLATT:

Q. Well, how can --

A. In this case, I believe that's already been determined, and a substantial amount of punishment has already been levied.

Q. Now, wait a second.

THE COURT: That's what I was afraid of.

BY MR. ROSENBLATT:

Q. You're -- wait, wait.

THE COURT: No, no. Wait a minute. I think that's what the problem is. I'm going to have to tell this to the jury, okay, and I've told counsel this before and I told counsel to tell his client. So if it came out, it came out. Now I'm going to have to tell you.

MR. WEBB: Judge, he asked the question.

THE COURT: I don't care if he asked the question. Okay. And this has been the core of this thing from the very beginning, and I told you this before. I'm going to tell it to the jury.

The issue with the attorneys general was not a punishment and is not to be considered as a

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punishment for what they did. That was a voluntary and agreed resolution of the case, voluntarily entered into by the parties.

This case is about punishment, on the punitive damage phase, on the jury verdict. It has nothing at all to do with the other case, other than to show that they do have certain financial obligations based upon the other matter. That's part of their obligation. It's an obligation, but it's not a punishment. All right. There is a big difference between that.

Go ahead.

BY MR. ROSENBLATT:

Q. So now having heard what Judge Kaye has just said, you would agree that intentional, fraudulent misrepresentations, concealment, being part of a conspiracy to hide a fraudulent scheme is deserving of punishment?

MR. WEBB: Object to the form of the question on the same grounds.

THE COURT: Overruled.

A. Well, my understanding of punitive damages in this case --

BY MR. ROSENBLATT:

Q. Could you -- I'll let you -- I just want to

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know, is it deserving of punishment? Can you answer that yes or no?
A. Not in this case.
Q. Not in this case. Okay. Go ahead. Why?
A. Because my understanding of punitive damages is to change behavior and punish. You won't let me talk about the first part of that, and I believe I presented how the company is operating today, and recommended that that be the basis on which the jury view us.
Q. You think -- you think you can -- you think you can simply waltz in here, tell the jury: "We've changed our way of doing business," and you can erase 50 years -- a half-century of fraud and misrepresentations and concealment, and say you don't think you deserve to be punished for those 50 years because you're a good guy today?
MR. WEBB: I object to the form of the question.
THE COURT: Overruled.
A. Well, that -- that wouldn't be my -- that's not my intent in saying that. My intent in saying that is that I believe that the things we're doing and the way we're running the business today are correct, and I believe that if we continue to do that, we can, in

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fact, have a positive impact on harm reduction relative to cigarettes; and I think that that's the most important thing to have occurred here at this point in time, and that's why I've invested myself in doing it. But, ultimately, the jury will have to decide whether or not we should be punished.
All I'm saying is I believe that the things we're doing are the right things, and that it would be inappropriate to do that, and we should be left to try to do these things.
BY MR. ROSENBLATT:
Q. You said a moment ago that your understanding of punitive damages, one of the purposes is punishment, correct? One of the purposes of punitive damages --
A. I said that.
Q. -- is punishment?
A. I said that, and I also said you won't let me address that, so I have --
Q. Punishment for conduct, for bad acts, that's the purpose of punitive damages?
A. I've already answered your question.
Q. Okay. Well, actually, your -- your response to five decades of misconduct was, and what you've tried to tell this jury, is: "Well, we signed an agreement with the attorney generals" --

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MR. REILLY: Object to the form, Your Honor.
Q. -- "and we got rid of our billboards."
MR. REILLY: Could we have a sidebar on this?
THE COURT: I don't think it's necessary for that question.

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MR. REILLY: Your Honor, it's discussing things that --
THE COURT: I can't understand a word you're saying. That's the only reason I'll need a sidebar, because I can't hear you.
All right. Let's have a sidebar.
It's true, I can't understand what you're saying.
MR. REILLY: I don't want to make a speaking objection.
(The following proceedings were had at sidebar:)
MR. REILLY: Only the jury knows what impact the acts of fraud were that they found. Neither Mr. Rosenblatt, neither you, nor Mr. Webb knows whether or not this occurred for five decades, one decade or one month.
THE COURT: Let me see that.
MR. REILLY: But Mr. Rosenblatt now has represented that he knows that it occurred for five

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decades.
THE COURT: I want to find out. That's your problem: "Over five decades"?
MR. REILLY: Absolutely.
THE COURT: Overruled on that. That's what the trial was all about. Okay.
(The sidebar conference was concluded, and the following proceedings were held in open court:)
MR. ROSENBLATT: Tell me what I had said.
THE COURT: I couldn't get it back on mine.
MR. ROSENBLATT: Apparently I was in the middle of a question.
(The question was read by the reporter as follows:
Well, actually, your -- your response to five decades of misconduct was, and what you've tried to tell this jury, is: "Well, we signed an agreement with the attorney generals.")
BY MR. ROSENBLATT:
Q. And you took down some billboards?
A. Well, I think what I presented is that we're -- the industry is paying about $250 billion, and then more for the next 25 years, and more beyond that.
I believe that's what I presented, but I also said that there's a regulatory scheme that goes with

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that -- that payment structure, and the regulatory scheme includes taking down billboards, but it also includes, really, regulation by the AG's, where they supervise the business.
Q. But you --
A. And that's, in fact, what's going on.
Q. Which you agreed to?
A. Absolutely.
Q. And one of the reasons -- one of the reasons that you agreed to settle with the attorneys general

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was because you knew that -- that in order to make the payments under that agreement, all you had to do was raise prices, and that would cover it, correct?

A. Well, we have no way of obtaining money unless we raise prices and charge the consumer. There is no other way to -- for the company to finance those payments.

Q. And you -- you also -- you also knew that in the context of a punitive damage trial -- and you're well aware of the fact that this is the only class action in the history of tobacco litigation ever to actually go to trial? You know that, right?

A. Humn.

Q. This is the only class action in the history of tobacco litigation ever to actually go to trial?

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A. Well, I'm not sure that's correct.

Q. It is correct.

MR. WEBB: Well, wait a minute.

A. Wasn't the Minnesota --

BY MR. ROSENBLATT:

Q. Yes. Tell me what you think is correct.

THE COURT: Whoa, whoa.

BY MR. ROSENBLATT:

Q. Tell me what you think is correct.

THE COURT: The jury will disregard Mr. Rosenblatt's statement at this point.

Let's get back to the question just previous to that, or prior to that: "Is that correct?" If you think it's not correct, you may so state.

A. I don't think that's correct.

THE COURT: Okay.

BY MR. ROSENBLATT:

Q. Tell me about this other class action that went to trial.

A. I thought Minnesota was a class action that went to trial.

Q. The state of Minnesota, the attorney general, is not a class action.

MR. WEBB: Wait a minute, Judge. That's not true, so I object to it. I object to the form of the

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question.

THE COURT: Okay. One was by the states; the other is private. And if you want to make a distinction between private and state actions, so be it.

BY MR. ROSENBLATT:

Q. The state of Minnesota case, you know, did not involve individuals, correct?

A. Well, the state, on behalf of the individuals --

THE COURT: I don't want to get bogged down in all this.

A. I don't know --

THE COURT: Let me try to explain something, and maybe we don't understand it.

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There's a big difference between the two cases. This case is a case brought by a group of people, who are claiming injury to themselves as a result of smoking cigarettes. The others are actions by the state, which are brought on behalf of states to recover money, which they, the states, have to expend in Medicare costs and so forth, to take care of people who were ill.

So there's a big difference between the state obligation in that case and the private obligation that

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these people have here. So that's what the distinction is between the two cases.

BY MR. ROSENBLATT:

Q. But that's what you were thinking of; you were thinking of the state case?

A. That's correct.

Q. Okay. In terms of your core values, in terms of your mission statement, you believe in accountability, don't you?

A. I do.

Q. You believe in consequences: If somebody violates the law, somebody engages in misconduct, there should be consequences, there should be accountability, right?

A. I believe that's correct.

Q. But you don't think there should be accountability for Philip Morris' decades of misconduct which this jury found after listening to nine months of testimony; there you think the accountability should be: "We're good guys and we do business a different way," right?

MR. REILLY: Objection, Your Honor.

THE COURT: Hold on a second.

Overruled.

BY MR. ROSENBLATT:

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Q. You don't want -- go ahead.

A. Well, I think the jury will decide what accountability ought to take place relative to the decades of the past.

Q. What do you think should happen with the accountability for the decades --

A. I don't know.

Q. You don't know?

A. That's not my decision.

Q. Because you don't -- you never really studied it or made it your business to learn anything about the misconduct of the past, because your attitude was: "It's a new era; it's a new day; I'm the new guy on the block, and this is how we're going to do things from now on"?

MR. WEBB: Object. It's been asked and answered twice.

THE COURT: It's somewhat repetitious, Counsel.

BY MR. ROSENBLATT:

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Q. You would have -- you would not have entered into the Master Settlement Agreement and obligated your company to pay billions upon billions of dollars unless you thought that was in your best business interest, correct?

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A. Well, I told you why we entered into the Master Settlement Agreement, Mr. Rosenblatt. It was because we were obviously out of alignment with society, and the states were all telling us that, and we felt like we had to do something about that.

It remains to be seen whether or not what happens, as an outcome of the Master Settlement Agreement, will, in fact, be useful or not useful to the company and how the company progresses out into the future. I don't think we know that yet.

Q. Certainly, Mr. Szymanczyk, you recognize, as a proponent of your mission and your core values, you recognize that you cannot escape your obligations to this class, to these hundreds of thousands of individuals, because you entered into a voluntary agreement with attorney generals?

MR. WEBB: Objection. Asked and answered twice.

THE COURT: That's a little different. Overruled.

A. Well, I don't want to escape any obligation that is determined to the members of this class, and if determination is made through due process that compensatory damages are, in fact, owed by my company, then we will, in fact, pay them.

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But I think the question here is whether or not punitive damages are in order, Mr. Rosenblatt. And I think that's a separate matter.

BY MR. ROSENBLATT:

Q. Well, you believed in the premise of the attorney generals cases. And was this a motivating factor in your decision to settle, that the states claimed that they had paid billions of dollars in medical costs to care for victims of your defective and unreasonably dangerous product, and the whole theory of that case was: "Reimburse us, the states, for the medical money that we have paid out on behalf of your victims." That was the premise of the case, right, and that's the case you settled?

A. Yes, but I wouldn't say that we agreed with that premise.

Q. As a matter of fact, in the Master Settlement Agreement, there's a clause in there where you say you deny everything; you don't admit anything in the -- you don't admit fault; you don't admit wrongdoing; you don't admit misconduct, correct?

A. Well, it's a clause that's in virtually every agreement that anybody enters into, including you, in any legal agreement. It's a boilerplate clause that's pretty standard in all agreements; and, yes, it's in

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that agreement.
Q. It's in that agreement?
A. It's in that agreement.
Q. That's part of the Philip Morris corporate culture --
A. No. It's part --
Q. -- never to admit fault or never to admit misconduct; to say: "We're good guys and we do business differently"; and never to say, like Victor Crawford said, "I lied and I'm sorry." That's part of the Philip Morris corporate culture?
MR. WEBB: I object to the argumentative form of the question, Your Honor.
THE COURT: Well, it's more of a statement than it is a question.
MR. ROSENBLATT: But it ends with "isn't it."
THE COURT: In any event, I'll have to sustain it on that basis, and it is somewhat argumentative.
If you're going to change gears, time for a recess.
Okay. Let's take a short recess.
Mr. Szymanczyk, more than ever now that you're on cross.
THE WITNESS: Absolutely.

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(A brief recess was taken.)
THE COURT: Okay. Have a seat.
What's the issue?
MR. WEBB: Yes, Your Honor. I have one quick matter before the jury comes back, just based on the last session of Mr. Rosenblatt's cross examination.
I just want to make a record on a motion for mistrial. I wanted to concisely state my two grounds.
THE COURT: Go ahead.
MR. WEBB: My first ground, Your Honor, is that Mr. Rosenblatt was asking Mr. Szymanczyk some questions about whether Mr. Szymanczyk believed that Philip Morris should be punished for its past conduct, and Mr. Szymanczyk was in the process of giving what he -- what was obviously a truthful answer in which he referred to the punishment under the MSA.
Your Honor then basically instructed him not to give that answer, which I respectfully suggest is wrong, since that was his honest answer to the question. But Your Honor then instructed the jury, as a matter of law, that the MSA and state settlement agreement payment are not punishment and cannot be considered by the jury as punishment in satisfying the purposes of punitive damages.
Your Honor, I respectfully suggest that is in

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direct violation of the Supreme Court law as set forth

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in the Owens-Corning case, and the MSA payments clearly can be considered by the jury as punishment. It actually is a fact question for the jury; it's not outcome determinative.

But what you've done, Your Honor, with that last instruction, you have taken away from the jury the single most important fact question that we have in the case, which is whether or not we've already received punishment, which should be considered by the jury.

And so, respectfully, because of that, I respectfully move for a mistrial.

The second ground, Your Honor, is that when Mr. Szymanczyk was trying to honestly answer a question of Mr. Rosenblatt's, regarding the attorney general settlement lawsuits, because Mr. Rosenblatt -- and Mr. Szymanczyk was trying to compare the attorney general lawsuits to this class action lawsuit, in response to a question Mr. Rosenblatt chose to ask, at that point, after giving an answer that they were similar, Your Honor then instructed him and the jury that the lawsuits were different, and you said that the attorney general lawsuits were completely different, because the attorney generals were only suing for recovery of medical expenses paid by the state.

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Your Honor, actually, just so you know for the record, those lawsuits involved a lot more than the state simply claiming money to recover for medical expenses that they had paid out. In fact, they actually included, among other things, claims for parents patriad claim for punitive damages on behalf of all of the people of the states.

And, by the way, that specifically applies to the state of Florida, where the Florida attorney general was suing, for among other things, punitive damages on behalf of all of the people of the state of Florida; and in fact, the state settlement agreement -- the lawsuit itself pleads that, and the state settlement agreement actually on the face of it, the Florida Settlement Agreement, the FSA, actually says on its face, they're settling the claims of punitive damages on behalf of the people of the state of Florida.

And so for those reasons, I move for a mistrial, Your Honor.

THE COURT: All right. Denied.

Okay. Let's bring out the jury. Bring out the witness.

(The witness entered the courtroom.)

THE BAILIFF: Bringing in the jury. Jurors

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entering the courtroom.

(The jury entered the courtroom.)

THE COURT: Have a seat, folks.

Go ahead.

BY MR. ROSENBLATT:

Q. Mr. Szymanczyk, the concept of marketing

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includes both advertising and promotion, correct?
A. Yes, it does.
Q. Okay. And the promotional -- the promotional budget for Philip Morris, Inc. is far larger than the advertising budget?
A. Oh, yes. That's true.
Q. And is it fair to say that during the year 1999, Philip Morris would have spent over $1 billion on promotional activities?
A. Well, if you -- if you include price reduction, then that would be a fair statement. In other words, there's a -- the largest component of promotion is just price reduction, because, as I mentioned, our prices are very high today relative to a lot of other products in the marketplace. So, periodically, there are price reductions that are offered in the marketplace. They still leave our products substantially higher priced, but they bring them closer to other products that are lower priced.

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Q. But in the -- in terms of the way you look at it and when you were the vice president in charge of sales and marketing, the concept and the issue of price reduction would have been included under the heading of promotions?
A. Yes, it would.
Q. Okay. What I'd like to do now is just -- so we can get a good cross-section of some recent Philip Morris advertising in magazines, as I've understood your testimony, in the last couple of years, by far, the heaviest advertising that Philip Morris does is in magazines?
A. Yes. It's -- it remained as the predominant advertising vehicle.
Q. And I'm going to focus -- I know you run some Basic ads and Merit ads, and you've done a lot of Parliament advertising recently, correct?
A. Just in some geographies.
Q. Some geographical areas?
A. Parliament really is a brand that only exists in certain geographies; up in the northeast, Florida and in Chicago, in that general area.
Q. Okay. But I'm going to focus in mainly -- and I'm going to go through this relatively quickly, just so we can get a good cross-section -- I'm going to

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focus primarily on Marlboro and also on Virginia Slims.
Would you agree that within the last year or so, that those are the -- well, for probably a lot more than the last year or so, that those are the two most heavily advertised brands of Philip Morris cigarettes?
A. Yes. I think that's -- I think that's true.
Q. Okay. And I try --
A. Marlboro --
Q. Go ahead.
A. Excuse me. Marlboro would be --
Q. By far?

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A. -- the largest of the advertised brands.
Q. And I tried to get, you know, recent magazines. This is Sports Illustrated, May 8th, Plaintiffs' Exhibit No. 9, with a picture of Randy Johnson on the cover.
Now, I want to ask you about this Marlboro ad, because this is not the classic cowboy motif. So, this is a two-page Marlboro Menthol ad in Sports Illustrated.
When was -- how would you describe this motif? It says: "Dance hall." I can't even read the big word, can you, on the barn?
A. No.
Q. What does this symbolize?

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A. Well, that's a new product introduction. That's a new product.
Q. Okay. I was going to ask you that. When did Philip Morris develop Marlboro Menthol and start advertising it?
A. Marlboro Menthol?
Q. A new menthol, Marlboro Milds.
A. Marlboro Milds is a new product. It's just recent -- it's being introduced right now.
Q. Okay. Well, how long have you had a menthol brand?
A. A long -- a number of years. I don't know exactly how long. It precedes me.
Q. How is Marlboro Milds different from the other choices that a smoker has under the general Marlboro umbrella?
A. It has a lighter menthol flavor to it than our regular menthol product does, and it has a cork tip on it.
Q. This is the May issue of Vogue magazine. Is it your understanding that this magazine is designed primarily to appeal to women?
A. Yes.
MR. WEBB: Is there an exhibit, just so I have --

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MR. ROSENBLATT: Oh, I'm sorry. This is exhibit No. -- the Vogue magazine is Exhibit 23.
MR. WEBB: What was the Sports Illustrated?
MR. ROSENBLATT: 9.
MR. WEBB: 9?
MR. ROSENBLATT: The Sports Illustrated was 9.
MR. WEBB: Thank you.
MR. ROSENBLATT: Okay.
BY MR. ROSENBLATT:
Q. Two-page Marlboro ad.
What is the thinking behind advertising Marlboro with the rugged cowboy motif in a basically -- what is basically a fashion, make-up kind of magazine for women?
A. Well, 47 percent of the smoking population is

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female.
Q. 47 percent?
A. 47 percent of the smoking population is female.
Q. They really have come a long way, baby. Because --
A. That's the fact.
Q. Okay. Go ahead.
A. And Marlboro, of the premium brand cigarette

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business, female premium brand cigarette business, Marlboro has about half of it. I mean, so Marlboro advertises to its market, which is really a very broad constituency of people.
So I wouldn't think about the advertising relative to the magazine, but advertising is intended for the audience of adult smokers, because it's designed to appeal to that audience. So it would be in a broad range of magazines.
Q. When Virginia Slims cigarettes were first introduced, were they introduced originally with the slogan: "You've come a long way, baby?"
A. I believe that's correct, but that was, I believe, in 1968, which is -- certainly predates me.
Q. When Virginia -- when Virginia Slims were introduced in 1968, what percentage of American women were smoking back then?
A. I have no idea.
Q. You know it was tremendously a lot less than 47 percent?
MR. WEBB: Actually, I have to object to the form of the question.
THE COURT: Is that a question?
BY MR. ROSENBLATT:
Q. Don't you?

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A. I really don't know.
Q. Okay. And then there's a Virginia Slims ad in this Vogue magazine, also two pages, but this is a Virginia Slims ad I don't think the jury has seen yet. It has a different kind of a motif. It's still: "Find your voice," but the saying here is: "In silence I see; with wisdom I speak."
You approved this ad?
A. I believe I did, yes.
Q. Marie Claire magazine, Plaintiffs' Exhibit 22. This is June 2000.
And, again, the -- is the back cover of a magazine like this more expensive or less expensive than the first two pages like this Marlboro ad?
A. I believe the back cover is the most expensive location.
Q. This is a new menthol, Marlboro Milds, and what is this, a radio?
A. It looks like it.
Q. Looks like a radio.
And the same Virginia Slims ad which we

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showed a moment ago, but also two pages.
Cosmopolitan, you can't get much more current than this, June 2000, Plaintiffs' Exhibit 17.
A woman's magazine?

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A. I believe that, yes, is intended for women.
Q. Would be classified as a woman's magazine.
Again, two pages. A new menthol, Marlboro Milds.
And the Virginia Slims ad with the: "Never let the goody two shoes get you down."
MR. WEBB: Your Honor, I object. Are these questions?
MR. ROSENBLATT: I'm going to have a question --
THE COURT: I haven't heard the question yet.
MR. ROSENBLATT: -- yes, after I go through.
BY MR. ROSENBLATT:
Q. The question I'm going to ask you at the end is whether these represent a fair, recent sampling of the kinds of advertising that Philip Morris has done in magazines over the last few years, but I want to go through the cross-section first.
People magazine, May 15, 2000.
MR. WEBB: What's the number, Mr. Rosenblatt?
MR. ROSENBLATT: Plaintiffs' Exhibit 5.
BY MR. ROSENBLATT:
Q. And this is the back cover. Classic Marlboro motif, correct?
A. (No response.)

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Q. Glamour magazine, June 2000, Plaintiffs' Exhibit 24, the back cover: "Come to Marlboro Country."
And a magazine called Style -- In Style -- and I was incorrect that I said Elle. The name of the magazine is Elle. That's how it's properly pronounced.
The magazine In Style, Plaintiffs' Exhibit 10, April 2000.
Now, let me hand this to you, because this is a little different in terms of a Marlboro ad, and I want you to just take a moment, look through it, tell me -- tell us what that is, and then I'll show it to the members of the jury.
A. Well, it's a promotion ad.
Q. To do what?
A. Well, it's -- there is a promotion, which is you can enter --
Q. A contest?
A. Yes. It's a sweepstakes. So it's a promotion, sweepstakes, and you can enter this -- if you're 21 years of age or older, you can enter the sweepstakes.
Q. Do a lot of people enter these sweepstakes?
A. Well, sure. People enter the sweepstakes, yes.

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Q. What does the winner get?
A. Well, there are various prizes. I can't remember what they are, but I believe they're included in there.
Q. Okay. And without -- without going through all of these which have been admitted in evidence, there's a magazine called Nylon, Plaintiffs' Exhibit 42, with two pages of Marlboro, two pages of Virginia Slims; a magazine called Premier, Plaintiffs' Exhibit 15.
I'm just asking you, are these typical magazines that Philip Morris advertises your products in?
A. I can't verify that each -- each -- I'll accept your assertion that it is, but I can't verify by memory, then.
Q. Okay. ESPN, Plaintiffs' Exhibit 25, two-page Marlboro ad. Typical advertising?
A. It would be our advertising, yes.
Q. So how many -- how many magazines in a typical month has Philip Morris advertised in, let's say, during the past two or three years?
A. Oh, I would say probably between 200 and 250.
Q. Does Philip Morris also advertise in newspapers?

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A. On occasion.
Q. But the heaviest advertising is in magazines; is that correct?
A. That's correct.
Q. Now, I'm going to show you a magazine called Racer, May 2000, and in this kind where there are --
MR. WEBB: The number, Mr. Rosenblatt?
MR. ROSENBLATT: This I'm offering now. This is not in evidence as yet.
BY MR. ROSENBLATT:
Q. You see, you have these two race drivers dressed in Marlboro kind of uniforms, at least with the insignia, the word Marlboro.
Does Philip Morris have to pay for that, or is that free advertising?
A. Well, it's not advertising. The magazine has apparently done an article on this particular race team and shot a cover. We wouldn't have had anything to do with that.
Q. And in this magazine, Racer, the first two pages of the inside cover, Marlboro --
A. It's a Marlboro ad.
Q. That, of course, is a paid Marlboro ad.
And now here, I assume what I'm going to show you now is an article in which you said the cover

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story: "Ground Zero, Marlboro Team Penske," so you didn't have to pay for that?

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A. No.
Q. What is Marlboro Team Penske? How does that relate to the Marlboro Grand Prix that's held down here?
A. Marlboro Grand Prix is one of the championship auto racing series races, and Marlboro Team Penske is the championship auto racing team which we sponsor, which is the one sponsorship that we operate.
Q. It's the one sponsorship, but how many events are there during the course of a year?
A. Championship auto racing conducts 15 races in the United States a year.
Q. So what you've agreed to, under the Master Settlement Agreement, is one sponsorship, but under the aegis of that one sponsorship, you're talking about 15 individual races?
A. Yes. That is correct.
MR. WEBB: I have no objection.
THE COURT: So admitted.
THE CLERK: Plaintiffs' No. 52.
MR. WEBB: What was the number?
THE CLERK: 52.

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(Plaintiffs' Exhibit 52 was admitted into evidence.)
BY MR. ROSENBLATT:
Q. This is another racing magazine I want to show you. It's called Championship Racing magazine, March/April 2000. And, again, the magazine is doing a story on a racer who's wearing an outfit where the most predominant words on his uniform are "Marlboro."
And, again, you have the first two pages with a Marlboro ad.
Now, this is an article in this magazine, Championship Racing magazine. A New Chapter, and again, it talks about Marlboro Team Penske for the year 2000.
Now, are all -- are all of the race cars -- do all of the race cars have the word "Marlboro" on them, like the race car depicted in this photograph in the magazine, Championship Racing magazine?
A. Do all of the race cars? What do you mean by "all of the race cars"?
Q. In the Marlboro Penske or Marlboro Grand Prix events.
A. No. Only two cars. They are the two cars that are the ones we sponsor. Other cars are sponsored by other manufacturers, like Budweiser beer and so on.

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Q. These races are televised?
A. I believe those races, some of them are televised, yes.
MR. ROSENBLATT: I'm offering this in evidence, the magazine, Championship Racing magazine.
MR. WEBB: I have no objection.
THE COURT: So admitted.

http://legacy.library.ucsf.edu/tid/mns07a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/qyjl0001

THE CLERK: Plaintiffs' 53.
(Plaintiffs' Exhibit 53 was admitted into evidence.)
BY MR. ROSENBLATT:
Q. Now, I'm going to show you a photograph with a racer in a Marlboro car, and then it says: "Danny Sullivan," I guess is the name of the racer, and it says: "Sports Illustrated For Kids."
You know what this is?
A. You got me. I don't know.
Q. You're not familiar with that?
A. No. I've never seen it before.
Q. You're not aware that that's handed out at racing events?
A. No. I don't know who -- I don't know who Danny Sullivan is. He's not one of our drivers.
Can I keep this?
Q. No.

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A. I'd like to know.
Q. And you don't know what the Sports Illustrated For Kids is?
A. Well, Sports Illustrated For Kids is a publication by Sports Illustrated, which is intended for kids.
Q. But you don't know what the relationship is between Sports Illustrated For Kids and the Marlboro racing car?
A. I don't think there's any relationship at all. I don't know how that got there or why it's placed there or how it's paid for; or why a Danny Sullivan, whoever Danny Sullivan is, is depicted in that car.
MR. WEBB: Can I see that, Mr. Rosenblatt?
MR. ROSENBLATT: I'd like to have it marked for ID.
MR. WEBB: I have no objection to --
MR. ROSENBLATT: Then I'll offer it into evidence.
MR. WEBB: I just -- there's got to be some foundation laid. He doesn't know what it is; I don't know what it is. If someone lays the foundation, I have no objection. But no one knows what it is.
MR. ROSENBLATT: Dr. Blum knew.

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MR. WEBB: We can talk about this at a sidebar.
THE COURT: Mark it for ID.
(Plaintiffs' Exhibit 1-K was marked for identification.)
BY MR. ROSENBLATT:
Q. Okay. Hot Rod magazine, June 2000, you're familiar with this publication?
A. I've heard of it.
Q. Okay. And back cover: "Come to Marlboro Country."
When the racing events are being televised,

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obviously every time the car goes around the track and it has the word "Marlboro" on it, there's an image on the screen?

A. If -- if, in fact, the camera is tracking that part of the race, that would be true.

Q. Now, I wasn't clear as to what you were saying about whether some of your magazine advertising policies have changed since the beginning of this punitive damage phase trial.

A. What's your question?

Q. Have some of your magazine advertising policies changed since this phase? The punitive damage phase of this trial began on May 15th.

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A. Well --

MR. WEBB: Your Honor, if I could object and I'd -- I think we should have a brief sidebar on this.

THE COURT: All right.

(The following proceedings were had at sidebar:)

THE COURT: Yes.

MR. WEBB: Your Honor, I attempted to go into this on direct examination, as to when the advertising policy changed, as to this group of magazines, on advertising, which he was about to explain on direct, but because of dialogue he was having with the attorney generals, your objection -- there was an objection by Mr. Rosenblatt. Your Honor then sustained the objection and told the witness not to mention attorney generals.

So if Mr. Rosenblatt wants to go into this area, that's fine, okay, but this witness clearly has a right to explain what it is that -- what was going on. In other words, Mr. Rosenblatt has no right to leave the impression that there was some change; that this witness changed this policy because of this trial, when, in fact, the truth is, which the witness will testify to, it changed because he's been having a lot of ongoing dialogue for the last two or three months

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with Attorney General Gregoire about this specific issue, which has been an ongoing dialogue.

So all I'm saying is, since Mr. Rosenblatt objected on direct exam, I just want the record to be clear that if he's going into it, that I have a right to go into this.

MR. ROSENBLATT: In all honesty, I think that -- I know Susan is reviewing the rough transcript, and I remember the discussion, I remember it, so I'll drop this and I'll look at the transcript and see how that came up and see how I want to pursue it.

THE COURT: Okay.

MR. ROSENBLATT: I don't need to go into this now.

(Discussion off the record.)

(The sidebar conference was concluded, and the following proceedings were held in open court:)

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Source: https://www.industrydocuments.ucsf.edu/docs/qyjl0001

BY MR. ROSENBLATT:
Q. In terms of the corporate relationships, we've seen a lot of charts with Philip Morris Companies, Inc. at the top, and at the same level, there's Kraft Foods, there's Miller beer, there's your company.
As a practical matter, during the decade of the '90s, you have always received your paycheck from

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Philip Morris, Inc.?
A. Philip Morris USA, yes.
Q. Okay. Now, Philip Morris, Inc. is also sometimes referred to as Philip Morris USA?
A. Yes.
Q. And you don't really know the difference or why that is or what the history of that is?
A. Well, I don't know specifically. I can tell you what I think it is, if you --
Q. Okay.
A. -- if it's important.
I think Philip Morris, Inc. is the name -- is the official name of my company, but it's referred to as Philip Morris USA, simply within the company so that it doesn't get confused with Philip Morris Companies and Philip Morris International. There's a lot of Philip Morrises there, so it distinguishes it. It makes it a little easier for people to understand who you're talking about.
Q. Well, you will admit that the tobacco business and the entities can be very, very confusing to outsiders, and sometimes to insiders? For example --
A. I --
Q. For example, Benson & Hedges. Your company

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owns Benson & Hedges in the United States, correct?
A. We own that brand trademark, yes.
Q. Okay. A lot of other companies in a lot of other countries own Benson & Hedges internationally?
A. There are some other companies that own Benson & Hedges in other countries.
Q. In other countries?
A. Yes.
Q. And I'm sure, without looking at a chart or without asking someone, you couldn't identify the owner in a given country --
A. No.
Q. -- off the top of your head?
A. I don't know.
Q. And the same thing, when you made the purchase -- when you made the purchase from Liggett of Lark, L&M and Chesterfield, you bought those three brands domestically in the United States, correct?
A. Yes.
Q. Those brands have different ownerships outside of the United States?
A. Yes.

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Q. Who is the major owner outside of the United States?
A. Philip Morris International.

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Q. Philip Morris International.
You would agree that the average smoker, when he sees Philip Morris, he or she sees Philip Morris, they're not making: "Well, this is Philip Morris USA, and this is Philip Morris International"; all the average person knows is this is Philip Morris?
A. The average person doesn't know that. The average person sees a brand. We don't promote or advertise Philip Morris, other than in some other countries in the world, there is a Philip Morris brand. It doesn't exist in the United States, but consumers see brands. They don't know who makes them.
In fact, I've seen research that indicates that many consumers in this country think we make Camel cigarettes, which we don't. So consumers really understand brands; they don't really understand the company.
Q. Well, for example, have you ever -- is there any research indicating how many Marlboro smokers know that Marlboro is a Philip Morris product, rather than a Reynolds product?
A. I don't know that.
Q. But you wouldn't be surprised if there were a lot who didn't realize it was a Philip Morris product?
A. I think that's possible.

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Q. Now, Mr. Webb asked you, you know, certain questions about -- about finances and about net worth and that kind of thing.
Now, from the time -- from the time you graduated college and went to work for Procter & Gamble, and then Kraft Foods, and then that small company, Swift and something -- Eckrich, and then came to work for Philip Morris, you've never been involved in the -- until you became CEO, but before then, you were never involved in the financial aspect; you were always in sales and/or marketing?
A. Well, I was never in the finance department, but, obviously, I had a budget, or the business responsibility that I had, and I had the responsibility for the management of the finances of that function.
And I majored in finance when I was in college. I have some fundamental financial understandings from my business career and from my education. But, you're correct, I have not practiced finance during the course of my career. But I have the responsibility for making sure that I understand the financials of the company, to at least a reasonable degree.
Q. What is the amount of money that Philip Morris, Inc. takes in every day from the sale of its

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cigarettes?
A. Revenue?
Q. Yes.
A. You're not talking about profit; you're talking about revenue?
Q. Talking about revenue.
A. I don't know. I'd have to figure it out.
Q. Well, you know it's in the multimillions, on a daily basis; that you know?
A. I would think so, yes.
Q. Yes. I mean, do you have -- we could do the arithmetic. If you knew by the year, then we would divide 365 days into that figure.
A. Well, if you take the total revenue the company collects, which includes federal excise taxes and includes the Master Settlement Agreement payments and all those things that are collected in the price discharged, I think the company's revenue is somewhere in the range of around, I think, $19 billion, something like that.
Q. 19 billion?
A. (Nodding head up and down.) Maybe 18. Something there.
Q. 18, $19 billion a year, with all of that money coming from, you know, the sale of cigarettes. I

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know some of it goes for taxes and other things.
A. A lot of it does, yes.
Q. Yes. Okay. But, I mean, the $19 billion per year represents the total revenues taken in on the sales of your cigarettes?
A. That's the revenue.
Q. That's the revenue. Okay.
And you say that since -- since the Master Settlement Agreement, you've raised prices about a dollar a pack?
A. No. The retail price has gone up about a dollar a pack. That isn't all our price increase.
Q. I understand.
A. Some of that is retailers and wholesalers. They raise prices as well.
Q. Okay. Well, what percentage of that is -- of the dollar a pack, what percentage of that would --
A. I don't know, off the top of my head.
Q. But whatever it is, the smoker is paying that extra dollar a pack?
A. Correct.
Q. And as I understood your testimony earlier, shortly before the Master Settlement Agreement was signed, went into effect, the average price of a premium brand of Philip Morris cigarettes was about

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$2.25, and now it's about $3.25?
A. That's -- that's average. Understand, it varies a lot nationally, because taxes are different in

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different states, but that's about average.
Q. Well, you buy cigarettes occasionally? I know you're not a regular smoker, but you're an occasional smoker, correct?
A. Yes. I smoke on some occasion.
Q. What are you paying for your cigarettes, about that, about $3.25?
A. Well, I don't generally buy them.
Q. You don't ever buy them?
A. It would be rare.
Q. Do you ever try someone else's brands?
A. No.
Q. That's not part of the Philip Morris culture, to be smoking a Camel?
A. Well, I just -- I haven't been -- I haven't had the occasion to do that.
Q. Now, if specific financial matters come up, which are, you know, beyond just ordinary budgeting, you would generally ask your senior vice president of finance for his opinion, and that's Mr. Steele, Henry Steele, correct?
A. Harry Steele.

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Q. Harry Steele, correct?
A. Yes.
Q. Is he going to be a witness in this case, do you know?
A. I don't believe so.
Q. Is Carolyn Levy going to be a witness in this case?
A. I don't know.
Q. She's the head of your youth prevention program?
A. Youth smoking, yes.
Q. Can you remember any time in your direct testimony where, as part of a response to a question by Mr. Webb, you said anything along the line of: We used to do such and such, but we don't do that anymore?
A. I don't know what you're talking about.
Q. A specific example where you would say, for example: We used to -- we used to deny that there was -- that cigarette smoking caused lung cancer and other diseases, and we don't do that anymore? I mean, that's just an example of what I'm looking for.
In your testimony, have you ever pointed to one thing that -- good or bad -- that Philip Morris did in the past that, as a result of the changes that you've instituted, you don't do anymore?

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A. Well, we used to run billboard advertising. We don't do that anymore.
Q. But you agreed not to do that anymore. I'm talking about -- I'm talking about anything outside the Master Settlement Agreement.
A. Well, we used to advertise in a broad range of magazines, and we've decided not to do that anymore.
Q. Yes, but you just decided a week ago.

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A. We used to advertise on back covers, and we don't -- we don't do that anymore. We've moved our advertising.

Q. And the reason you don't do that anymore is because you heard that in my opening statement, I showed magazines to the jury, and then you decided that might not look good, so we'll change our policy in midstream, in the middle of this trial, and take our ads off of the back covers of magazines, when we've got issues of May and June 2000 where they're on the back cover, and what you're saying to the jury is we're not going to do that anymore.

A. Well, actually, that's not the case. I started into a dialogue with Attorney General Gregoire --

Q. I'm not asking you --

MR. WEBB: Wait a minute. Wait a minute. He

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just answered this question.

A. That's not the case. You asked me the question --

THE COURT: I know, but it doesn't open the door.

MR. WEBB: Your Honor, he just asked the question.

THE COURT: I understand he just asked the question: What do you do; what do you don't do? It doesn't open the door to slip in all these little things that he just tried to do. And I'm sorry.

MR. WEBB: He didn't slip anything in at all, Judge.

THE COURT: I'm just not going to permit it, Counsel. Thank you.

THE WITNESS: What is your question, sir?

BY MR. ROSENBLATT:

Q. Without making any reference to any attorney generals, because you have heard what's been going on in the courtroom, without making any reference to that, you decided in the middle of this punitive damage phase of the trial to change your policy, or to suspend your policy, relative to advertising --

MR. WEBB: Your Honor, I --

Q. -- while this punitive damage phase was

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going on, isn't that correct, for whatever reason?

MR. WEBB: Objection. He can't instruct the witness how to answer the question. He can't do it. I object to the form of the question.

THE COURT: Overrule the question -- the objection.

The question is somewhat different. Okay. Now it lends itself to another interpretation.

MR. ROSENBLATT: I'm willing to go back to my original question. Either one.

THE COURT: The point is, and I guess we can resolve it -- let's talk sidebar.

(The following proceedings were had at

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sidebar:)
THE COURT: Well, I thought we had instructed him on this position, not to talk about attorney generals. I understand --
MR. WEBB: I came to sidebar originally --
THE COURT: He's not a lawyer, I understand. But he's trying to tell it like it is. But we're putting far too much emphasis on that case. I didn't want to make it a feature of the case, but it's becoming a feature of the case.
MR. WEBB: But, Judge --
THE COURT: Just a minute.

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MR. WEBB: I apologize.
THE COURT: Will you, please.
About the attorney generals, the settlement here, the settlement there, that isn't part of the case. The only reason I allowed it in the first place was to show there was an obligation on the part of the company which impacted their ability to pay, and that's all it was. Okay.
But you guys are making much, much more of it than it should be. You've tried to make it a total feature of this case. You tried to retry the whole thing in this case, and I didn't want that to happen.
But every time I turn around, it comes up and it comes up and it comes up, and it's not part of this case, nor do I want it to be part of this case.
Now, this particular issue here, he had a discussion with these people, and based on that, for whatever reason, he decided to change it. That's his story. Okay. That's what he says occurred.
You're saying they only did it because of what you said and what happened in the trial.
MR. ROSENBLATT: Yes. He actually volunteered -- he actually volunteered that "we've changed our magazine policy," but he --
THE COURT: The reason he said he did that --

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MR. ROSENBLATT: He volunteered, and then I said: Did you do it in the midst of this trial?
THE COURT: In the midst of this trial. That may very well be. They may have done it in the midst the trial. I don't know.
I think he's saying: We discussed this sometime ago, and it just happened to come to fruition at this time in the trial. I think that's what he's saying.
MR. ROSENBLATT: He can answer with respect to that: This was something that was in discussion, we discussed and it came to fruition.
If that's his answer, that's his answer.
MR. WEBB: Your Honor, I came to a sidebar five minutes ago because I saw this problem and pointed it out. Mr. Rosenblatt then said he was going to go talk to Susan.
MR. ROSENBLATT: No. That's a different --

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THE COURT: That's different.
MR. WEBB: That's the same issue. I just want to make sure the issue is clear.
The issue Mr. Rosenblatt wants to try to establish is that Mr. Szymanczyk changed this magazine policy because of this jury trial.
THE COURT: I understand that.

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MR. WEBB: And that's not the truth. It changed because of a dialogue with the attorney generals. I warned Mr. Rosenblatt of this at sidebar, so that we would not have the problem that we -- I came to the sidebar to front this off, and that's what I did.
Then he went back into it again, Judge.
THE COURT: It's too late, because the issue came out, and I'm going to let him respond that after a discussion -- I don't know why, even after discussing it with them, because I don't think that's part of the settlement, as to what they can and cannot do, by deciding not to do something.
MR. WEBB: The attorney generals raised it with him, and that's why he responded to what they wanted him to respond to.
THE COURT: I'm tired of the attorney generals determining the direction of this case, because it's not supposed to be that way.
MR. ROSENBLATT: I'm going to drop it. I'm going on to something else.
(The sidebar conference was concluded, and the following proceedings were held in open court:)
BY MR. ROSENBLATT:
Q. You recall on your deposition, I asked you

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your personal opinion, as the CEO of Philip Morris, Inc., whether cigarette smoking causes lung cancer and other diseases, and all you could say to that was: "I think smoking is bad for your health."
A. That's not how I recall it. I recall that you asked me -- I asked you whether you wanted my personal opinion or you want my opinion as the CEO of the company. You asked me my personal opinion. And I told you that my personal opinion is that smoking is bad for your health.
Q. And what's the position of the company?
A. I believe that I explained the position of the company on my direct.
Q. "That there's a universal, scientific consensus, but we don't agree with it"?
MR. WEBB: Object.
A. That's not what I said.
BY MR. ROSENBLATT:
Q. "We agree with you, if your definition is totally statistical"?
A. What I said was, on the question of whether or not smoking causes disease or cancer, I said: Yes, the basis for my answer is the strong scientific

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statistical data, the same data the Surgeon General uses to make that conclusion.

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Q. The Surgeon General concluded in 1964 that cigarette smoking causes lung cancer, scientifically, medically, and it was not limited to statistics; do you agree with that or disagree with that?

A. My understanding is that the conclusion was drawn based on epidemiological evidence, which is statistical evidence.

Q. So if you want -- your position is that statistically it causes disease, but if you want real science, we -- it's still -- it's still an open question?

A. No, not at all. The decision is made, and it's appropriate, scientifically, to make the decision based on epidemiological evidence, and that's been made. Smoking causes cancer.

Q. Without -- without any qualification?

A. No. I'm not making a qualification. I'm saying if that's -- if that's the basis on which you're making that decision, that's your definition of cause, then, yes, smoking causes cancer.

Q. And you're not aware that that was precisely the position your witnesses took during the Phase I trial of this case?

MR. WEBB: Judge, can I just --

BY MR. ROSENBLATT:

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Q. Precisely --

MR. WEBB: Objection. Asked and answered twice.

THE COURT: Yes. I really think we're going over old ground.

MR. ROSENBLATT: Okay.

THE COURT: Sustained.

BY MR. ROSENBLATT:

Q. Did you say a few moments ago in the history -- because we keep hearing about all these cases out there -- are you saying that in the history of Philip Morris, only a total of eight cases have ever gone to jury trial? Is that what you said earlier?

A. I said there has been, in the history of Philip Morris, there have been eight individual smoking and health cases that have gone to trial with a jury.

Q. When we hear there may have been hundreds of cases filed, but only a total of eight, actually -- in the whole --

A. Not including this one.

Q. Yes.

-- in the whole history of Philip Morris were ever decided by a jury, a total of eight?

A. Eight individual case.

Q. Eight individual cases.

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A. There are thousands of cases --
Q. Yes, but when you talk about all this litigation exposure, in terms of your -- in terms of your liabilities, and you talk about thousands of cases, the truth of the matter is, only eight cases have ever gone -- eight individual cases, plus this class action, have ever gone to jury verdict, in the whole history of Philip Morris?
A. That's correct.
Q. Okay. Now, you know, in talking about assets and liabilities and balance sheets, the biggest asset that Philip Morris has are the millions of addicted smokers who are willing to plunge down $3.25 or $4 for a pack of cigarettes, and that's -- that's what enables you to take in $19 billion every year; that's -- that's your asset, the flow of cash that comes in on a daily basis, seven days a week, 365 days a year; isn't that correct?
A. Well, I've described the assets in the business. Those are -- you're describing the sales of the business. The sales of the business are the people that buy the product; otherwise, the business doesn't exist.
Q. That's the point I'm making.
You're making a distinction between the

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assets of the business and the sales of the business, because you want to come up with a low number.
A. No. The sales of the business to date are reflected in the assets. The future sales of the business aren't reflected in the assets, nor are the future liabilities.
Q. In these eight cases, these eight individual cases that went to trial, where people with lung cancer and other forms of cancer were suing your company, and they all had a long history of smoking your products, did Philip Morris ever make a policy decision that: "We're going to come in and we're going to admit that, yes, the lung cancer was caused by our cigarettes"?
MR. WEBB: Your Honor, objection. Motion.
THE COURT: Overruled.
A. No.
BY MR. ROSENBLATT:
Q. And that's zero change. Zero change, in those eight cases and these three cases, zero change in the policy of Philip Morris, because you know that although these three individuals had a very long history of smoking cigarettes, the defense is what it's always been by all of the tobacco companies: "It's something else that caused your lung cancer or throat cancer"?

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MR. REID: Your Honor --
MR. UPSHAW: Your Honor --
MR. WEBB: Objection, Your Honor.
MR. REID: That violates the limine rule.

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THE COURT: I don't think it does.
MR. UPSHAW: Objection as to all companies.
THE COURT: Overruled.
BY MR. ROSENBLATT:
Q. You can answer the question.
A. What's the question?
MR. ROSENBLATT: Nancy.
(The question was read by the reporter as follows:
And that's zero change. Zero change, in those eight cases and these three cases, zero change in the policy of Philip Morris, because you know that although these three individuals had a very long history of smoking cigarettes, the defense is what it's always been by all of the tobacco companies: "It's something else that caused your lung cancer or throat cancer"?)
A. There is no policy relative to that within Philip Morris.
BY MR. ROSENBLATT:
Q. Oh, it's just a coincidence, that Philip

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Morris -- that Philip Morris has never admitted in a courtroom anywhere in this country, that: "Whether you smoked 40 years or 30 years or 50 years, yes, our product caused it"; there's no policy, but that's been the fact?
A. I've answered your question, that there's not a policy, but what does take place in each case is definitive based on that situation. As I told you, in those eight cases that you're discussing, in five of those cases, the end result of the case was favorable to the company.
So, in each one of those cases, the jury has looked at the information and has made a determination, and that determination has not always been that the company was at fault.
Q. You know that as long as you accept only the proposition that cigarette smoking causes lung cancer and other diseases if you accept the epidemiological or statistical definition, you know, that always gives your company the out, to say: "In an individual case, we never have to admit that the cigarette smoking caused the cancer," and isn't that the reason for only accepting the statistical definition?
A. Well, it's the fact, is what it is. It remains the fact of the matter that until we have the

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capability to determine the mechanism, then it's a very difficult thing to determine.
Q. Isn't the fact of the matter -- isn't -- and listen carefully to this, because you've got on your Web site -- isn't -- you say the fact. The fact of the matter is, that in terms of the overwhelming, universal, scientific and medical consensus that cigarette smoking causes disease, the medical community and the public health community -- it doesn't matter,

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had -- has nothing to do with that definition, if we can discover the mechanism some day, great, but we don't need to understand the mechanism to know that cigarette smoking causes cancer, with no qualifications?

A. Well, so what's your question?

Q. Isn't that true?

A. I'm not sure I understand what you're asking me is true. What are you asking me is true?

THE COURT: Rephrase it.

MR. ROSENBLATT: Read back the question, please.

(The question was read by the reporter as follows:

Isn't the fact of the matter -- isn't -- and listen carefully to this, because you've got on

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your Web site -- isn't -- you say the fact. The fact of the matter is, that in terms of the overwhelming, universal, scientific and medical consensus that cigarette smoking causes disease, the medical community and the public health community -- it doesn't matter, had -- has nothing to do with that definition, if we can discover the mechanism some day, great, but we don't need to understand the mechanism to know that cigarette smoking causes cancer, with no qualifications?)

BY MR. ROSENBLATT:

Q. So my question -- let me shorten the question.

The question is: Isn't the truth and the fact that in terms of the public health community and the overwhelming medical consensus, the mechanism is irrelevant to reach the conclusion that cigarette smoking causes these diseases?

A. Well, I don't agree with you. The medical community and the scientific community and certainly the public health community carries with it the duty to warn the American public, and they have to make a decision based on the evidence that's available. So, based on the evidence that is available, they have exercised their duty to warn the American public and to

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tell them that smoking causes disease.

They have done that based on the epidemiological evidence, and then factoring in items like plausibility and so on, and they've drawn the conclusion that they should tell the public that smoking causes these diseases, and I think that that's appropriate and correct.

It doesn't changes the fact that for somebody like me, who's trying to figure out a way to make the product have lower risk, that the mechanism is very important; and it doesn't change the fact that in order to identify whether or not a human being may be likely to get a disease from smoking, or to identify the occurrence of the disease or the beginning of the

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disease at an earlier stage, then understanding the mechanism is, in fact, a very important item; and, in fact, it's key to understanding, in a specific individual, what has happened relative to smoking and disease causation.

So, I think it's a very important unknown at this point in time.

Q. Since you didn't -- you didn't read any of the testimony in Phase I, you have no way of knowing whether what you just said was said in almost those words during Phase I by your witnesses, and all you're

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doing is repeating --

A. Well, I think it's true.

Q. I know you do.

So there's a public health definition of causation, which you think is okay, because they have a duty to warn the American people?

A. Well, it's the public definition of causation, and it's what's provided publicly by us and by the public health community.

Q. Now, although you talk about all these separate companies, in terms -- in terms of the chain of command, you, of course, are the -- are the head of Philip Morris, Inc., but Geoffrey Bible, who is the CEO of Philip Morris Companies, is obviously above you?

A. Yes.

Q. As is William Webb, the chief operating officer for Philip Morris Companies?

A. That's correct.

Q. He's also above you?

A. That's correct.

Q. And both Webb and Bible were involved in terms of negotiating the Master Settlement Agreement --

A. I don't --

Q. -- even though they were negotiating it for your company?

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A. I don't know that that's true.

Q. Who negotiated it? I mean, who was directing the lawyers?

A. I told you, Meyer Koplow negotiated.

Q. But who directed it?

A. And a number of us provided input to Meyer Koplow.

Q. Now, in terms of change, nothing has changed from the Phase I trial up until today, on the subject of addiction; it's still the position of Philip Morris, your company, that anyone who really wants to quit can quit? That was the position of your company during Phase I, and that's your position today, isn't it?

A. Well, I think I told you my position on addiction and the company's position on addiction in my deposition. I think that most people who want to quit smoking can quit. I told you that I don't -- I'm not going to presume or say that there aren't some people who may have a more difficult time than others in being

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able to do that, but I think most people who choose to quit smoking can, in fact, quit.
Q. Well, if that's true, they're not really addicted; they're not physiologically addicted?
A. What makes you say that?
Q. Because my understanding of the definition of

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addiction is you want to quit and you can't.
MR. WEBB: Well --
BY MR. ROSENBLATT:
Q. Isn't that what addiction means?
A. No.
Q. You want to quit but you can't?
MR. WEBB: Objection. It misstates -- it assumes a fact beyond what the witness has testified to, Your Honor.
THE COURT: It's just a question posed to him as to whether that's the correct premise. The witness has said no, it's not. So we're back to square one.
BY MR. ROSENBLATT:
Q. Well, what's your definition of addiction?
A. Well, my definition of addiction is a repetitive behavior that some people find difficult to quit. Sometimes that's associated with a psychoactive drug, which is the case of nicotine in a cigarette, but people -- some people are addicted to alcohol, but they quit drinking. They stop drinking alcohol.
And I don't -- I don't think your definition of addiction, that you can't quit, makes any sense at all. I've never seen anybody who's concluded that that's what addiction means, that you can't quit.
Q. Well, what do you say on your Web site about

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addiction? Do you say: "Our product is addictive"?
A. We say: "Smoking is addictive, as the word is commonly used today."
Q. We're back to definitions. "As the word is commonly used today." How is the word commonly used today?
A. I think I just described it.
Q. Okay. That's how it's described.
And, of course, we're not talking about anything similar to heroin addiction or cocaine addiction; the common-day usage of addiction to you is like -- like coffee --
A. Well, I didn't say that.
Q. -- rather than like heroin?
A. I wouldn't say that. I wouldn't put it in the camp of heroin, but I've never used heroin, so it would be hard for me to determine that.
But I said it's a -- a repetitive behavior that some people find hard to quit, and it's associated with something that's psychoactive, and that's the case with nicotine.
Q. So causation depends upon your definition, and addiction depends upon your definition?
A. There has --

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Q. Correct?

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A. There always has to be a basis for a definition. There has to be --
Q. Well, you had an opportunity to really demonstrate change, significant change, totally unconnected to your voluntary agreement with the attorney generals, and that was when you decided to purchase for $300 million dollars from Bennett LeBow, the trademarks to Lark, Chesterfield and L&M, and you know what I'm getting at, don't you?
A. Go ahead.
Q. Okay. I will go ahead.
When Bennett LeBow sold you those trademarks for $300 million, he had had, for anyone who bought a Lark, anyone who bought an L&M, anyone who bought a Chesterfield, had on the package this statement, three words, that anyone could understand: "Smoking is addictive."
And if you really wanted to demonstrate that you were a changed company, you would have left that on the packages, but, instead, you removed it, correct?
A. Well, we did, and I'll tell you why --
Q. Tell me why.
A. -- we removed it.
First of all, I want you to understand, I don't have the objection to having "Smoking is

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addictive" on the pack, if that's what the public health authorities decide they want on the pack.
But right now, our warning labels on our packages are based on the Federal Labeling Act, which prescribes the specific warning labels and the schedule by which they have to be put on the pack, which covers 365 days of the year. And that -- that act does not allow latitude to put additional warning labels on the pack.
Plus, it is not clear from Congress at this point that those are the words they want on the pack. Congress has considered that warning label on more than one occasion. In fact, there is a bill right now in Congress that includes revisions to warning labels. And we'd be more than happy to put warning labels on our pack based on what the public health authority, through Congress, determine what they think is appropriate.
But to do that, simply on our own, to simply just decide what ought to go on the pack, I think would be totally inappropriate, based on what we have agreed to do with members of the Congress and so on.
That's why I had to take those words off the pack.
Q. Mr. Szymanczyk -- Mr. Szymanczyk, are you

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telling us that, in your opinion, if you had decided to simply continue LeBow's statement on the cigarettes: "Smoking is addictive," are you telling us that you think either the public health authorities or Congress would have objected to your saying, "Smoking is addictive" on those packages of cigarettes?

A. I think that there is an absolute possibility that that would have occurred; that, in fact, some people would be concerned, and, in fact, this debate exists in the public health community, about whether or not we would be telling people that they can't quit smoking, by putting those words on the pack.

So, we are going to wait until the public health authorities decide what the specific language is they want to put on the pack, relative to the subject of addiction. When they decide, we'll be more than happy to put that information on the pack in the way they deem appropriate.

Q. Aren't you aware that Mr. LeBow put that language on the three packs of cigarettes because he knew that's what the public health authorities want?

MR. WEBB: I object to what Mr. LeBow --

THE COURT: Sustained.

BY MR. ROSENBLATT:

Q. Having said what you just said, can you

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explain why, during the period of time Mr. LeBow had that language on those three brands of cigarettes, that "Smoking is addictive," that neither the public health authorities or Congress or the attorney generals, or anybody else, ever objected to it?

A. I don't know whether they did or they didn't, but at the point in time I made that decision, Mr. Rosenblatt. I also made the decision to put the complete amount of information on our Web site, on the subject of addiction, along with all of the information from the Surgeon Generals, and others, on the subject of addiction, so that it would be clear and that we would be providing precisely what the public health community has concluded on that subject.

So, it's not like we didn't provide that information. We did, but we didn't violate the Federal Labeling Act in doing it. And we're waiting for Congress to go ahead and decide that label, as well as a number of other labels that they're looking at.

Q. During your negotiations with LeBow on the $300 million deal, did you ever ask him whether Congress or the attorney generals or the public health authorities had ever objected to him putting on the cigarettes: "Smoking is addictive"?

A. No, I did not.

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Q. Did the subject between the two CEOs, on a sale of $300 million, did the subject of that label ever even come up?

A. No. We did not discuss that.

Q. It was not discussed?

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A. That's correct.
Q. Not addressed.
So, obviously, from your standpoint, after the deal was made, LeBow didn't care one way or the other whether you continued it or didn't continue it?
MR. WEBB: Object to what you're --
MR. MARKS: Objection.
THE COURT: Sustained.
Is this your break time?
All right. We'll recess for the evening, folks. We'll come back tomorrow morning at 9:30, and we'll resume.
Same rules apply.
(The jury exited the courtroom.)
THE COURT: Okay. We'll meet here in the courtroom at 9:30.
MR. ROSENBLATT: Pardon me, Judge?
THE COURT: 9:30 tomorrow morning.
Court will be in recess.
(Court was adjourned at 4:35 p.m.)

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